Supreme Court, U.S.
FILED

021760 MAY 28 2003

No.

IN THE
SUPREME COURT OF THE UNITED STATES

Gwen R. Pricer,
David Pricer,
Randi L. Eckhardt,
David C.M. Pricer,

Petitioner(s)

v.

Samuel M. Butler,
Betty C. Butler,

Respondent(s)

On Petition For Writ Of Certiorari
To The Honorable Supreme Court Of Virginia

PETITION FOR WRIT OF CERTIORARI

Gwen R. Pricer, *pro se*
David Pricer, *pro se*
Randi L. Eckhardt, *pro se*
David C. M. Pricer, *pro se*
P.O. Box 992,
Goochland, Virginia , 23063
540-891-1953

BEST AVAILABLE COPY

QUESTIONS PRESENTED

1). Were the Civil Rights and Liberties of the Pricer family violated under the Fifth, Sixth, Seventh, Eighth, Thirteenth, and Fourteenth Amendment(s) of the Constitution Of The United States,

2). Were the Rights and Liberties of Randi L. Eckhardt who is a disabled person violated under the Fifth, Seventh, and Fourteenth Amendment(s) of the Constitution Of The United States,

3). When violation(s) of the Fifth, Seventh and the Fourteenth Amendment(s) of the Constitution Of The United States has occurred(s), and a State Supreme Court deny(s) a Petition For Appeal and Rehearing,

a. does the Court fail to "Self Govern Itself"and thus fail to protect the rights and interests of a disabled persons(s) and any citizen(s) of the State,

b. surrender jurisdiction to the United States Supreme Court for final and complete justice for a disabled person(s) and their family,

c. aid in perpetuating the prejudice and stigmata of a disabled poor person(s) or any person(s) of the United States that face a populace who already

discriminate(s) and inflict(s) pain and injury against them when they are totally incapable to represent themselves in the foreign arenas of government and law,

d. further cause the interests and rights of a mentally and physically disabled person not to be acknowledged and protected during a Warrant in Debt and Unlawful Detainer Action proceedings before a State tribunal,

e. deny a disabled person and their family the right to equitable final and complete justice in a civil and or criminal matter,

f. blind the existence of civil and criminal conspiracy(s), fraud and other evil acts having been and being perpetrated against a mentally and physically handicapped person(s) and family members, by certain Government agencies and official(s) and as such, causes a Citizen(s) to have further harm and injury being perpetrated against them to protect the agency(s), as has occurred with the Pricer family,

g. aid local private citizen(s), private company(s), corporation(s), that are "in power and are wealthy or

the most haughty of these and others", and who have acted under "the color of state law", to separate and segregate any Citizen(s),

4). Where there exists State and Government judicial proceeding(s) requiring a State Code and Statue to be identified and wherein, a mentally disabled person, is involved, does the definitive description of "LUNATIC" as used in the Code Book of Virginia or any other Code or Regulation Book cause further segregation, prejudices, and stigmatization within its own government and judicial agency(s) and private sector(s).

LIST OF PARTIES

PETITIONERS:

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David Pricer, *pro se*
* Randi L. Eckhardt, *pro se*
David C. M. Pricer, *pro se*
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RESPONDENTS:

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Michael M. Palmer Esq., Counsel Relieved

* Mentally and Physically Disabled

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STATEMENT

JURISDICTION:

This Writ for Certiorari originates from the General District Court of Fauquier County and was caused by a Warrant in Debt and Unlawful Detainer Action being filed against Gwen R. Pricer and David Pricer, your Petitioners, and whose daughter is severely mentally and physically disabled. Such action was initiated by Samuel M. Butler and Betty C. Butler. Mr Butler served as a member of the Fauquier County Supervisory Board of Building and Development Department for sixteen (16) years. A Final Order from the General District Court of Fauquier County was entered on the 9th day of March 2001. The Pricer family filed their appeal in the Virginia Circuit Court of Fauquier County on 20th day of March 2001. The family perfected their appeal to Court on the 12th day of June, 2001. A Final Order was entered from the Virginia Circuit Court of Fauquier County by the Honorable Jeffrey W. Parker on the 23rd day of April 2002, and memorialized on the 24th day of April 2002. On the 29th day of April 2002, the Pricer family filed a Notice and Motion to Amend the Final Order entered by the Circuit Court. The Pricer family also prayed for the reimbursement of attorney fees regarding this matter. On the 8th day of May 2002, the Honorable Jeffrey W. Parker convened a hearing for the consideration of all such matters and after hearing *ore tenus* by counsel from both parties, the Honorable Jeffrey W. Parker entered a decision denying the Pricers' Motion to Amend and stated that *"such Motion to Amend is frivolous and without merit"*, and denied the Pricer family reimbursement of attorney

fees. He then penalized them by awarding the sum of One Hundred fifty dollars($150.00) to S. Crisler Lindsay, as the Counsel for Mr. And Mrs. Butler, for the *"inconvience of having to appear on such a frivolous matter"*. A Hearing was also held by the Honorable Jeffrey W. Parker regarding a Show Cause against Michael M. Palmer, Esq., as Counsel for the Pricer family and to his reason(s) for not presenting himself for a Court scheduled 5-day trial. Upon hearing oral argument from Mr. Palmer, Judge Parker entered a Order, deferring sentencing of Mr. Palmer for twelve (12) months on the condition that he completely remove him- self from any further matters regarding Butler v. Pricer in the event the Pricer family would consider to re-file their claim. On the 8th day of May 2002, the Honorable Jeffrey W. Parker entered his decision on these matters. The Final Order was memorialized on the 11th day of June 2002, by Mr. Crisler S. Lindsay over a month after the Court had made its decision. The Pricer family filed their Notice of Appeal in Court of Appeals on the 17th day of May 2002. On the 24th day of June 2002, the Supreme Court of Virginia entered an Order to remove the Case from the Virginia Court of Appeals. On the 24th day of July 2002, the Pricer family filed their Petition for Appeal to the Supreme Court of Virginia. On the 12th day of August 2002, the Pricer family filed a Motion to Amend their appeal and which was granted on the 18th day of September 2002, by the Supreme Court of Virginia. On the 23rd day of December 2002 Supreme Court of Virginia denied the Pricer family their Petition for Appeal stating *"no reversible error in the judgment complained of and accordingly the Court refuses the petition for appeal"* On the 6th day of January 2003 , Petition for Rehearing was filed in the Supreme Court of Virginia. On the 28th day of February

2003, the Supreme Court of Virginia entered an Order denying your appellant(s) a rehearing.

STATEMENT OF THE CASE

Mr. and Mrs. Butler criminally induced the Pricer family to enter into a residential property Lease that commenced on the 15th day of September 2000, and included a residence (cottage) and barn situated on twenty-six and one-quarter acres (26 1/4) acres. The leased residence (cottage) and property would become the home of Gwen R. Pricer, (mother), David C. M. Pricer, (son), and Randi L. Eckhardt, (daughter, *who is permanently disabled*). Mr. David Pricer,(the husband), was not a permanent resident. The family also had certain pets as part of their residential household, along with equine and other livestock that would have utilization of the barn facility. The Lease would include all utility services to both the residence (cottage) and the barn facility. The cost(s) for such services would be the responsibility of the Pricer family and was to be reimbursed to Mr. and Mrs. Butler with the monthly rent payment. Additionally, a Security Deposit in the amount of Six-Hundred dollars ($600.00) was to be paid in two (2) equal payments of Three-hundred dollars ($300.00) each. The first payment was paid on the 8th day of August 2000. The latter payment of Three-hundred dollars ($300.00), was due after final completion of certain property clean- up, water hookup, and maintenance by Mr. Butler to the residence. Clean-up of the property around the residence and barn facility was to include the removal of considerable waste material(s) and debris located throughout the property. This was agreed upon nuncupare during a meeting with Mr. Butler, David

Pricer and Gwen R. Pricer and was duly noted on the residential property Lease by the omission of any penned due date for final payment of the balance. The barn facilities located on the property would provide a future income for Mrs. Pricer and her family by the establishment of an Equine Boarding Facility.

During the week of November 22nd 2000, a fire broke out at the mobile home residency directly adjacent the Pricers leased residential (cottage) property which caused a temporary shut down of all vital electrical services to the residential (cottage)portion of the leased property. The barn facilities, however, retained their electrical supply through a separate utility box located in a rental unit adjacent to the barn portion of the leased property. On or about the 28th day of November 2000, such person(s) who identified themselves as agent(s) of the Rappahannock Electric Company, arrived and permanently removed the electrical circuit box from the residential property where the fire had taken place. This action caused a total loss of all vital electrical services as needed by the family to care for their handicapped daughter and son. The Pricer family was required to locate their 28'(ft.) Shasta Recreational Vehicle to the barn facility to reside in, until such time Mr. and Mrs. Butler could restore such utility service to the residence (cottage). The Pricer family was caused to reside in their RV by their lack of financial ability to seek other more suitable accommodation(s), and the frigid weather of the time. They fully expected that utility services to the residence would be restored in the near future. Thus, the correct and proper notification to Mr. and Mrs Butler to restore such utility service(s) was made by the Pricer family, but Mr. and Mrs. Butler did not respond to any of these multiple attempts. On or about the evening of 18th day of

December 2000, during the first severe snowstorm of the year, Mr. Butler personally and with help from other private sector(s), cut-off all electrical and water service to the barn facility, thus removing the last source of utility service(s) available to the Pricer family and their RV, causing severe endangerment to the lives of their *handicapped daughter* and their son. Without financial resources available to Mrs. Pricer to afford the opportunity to arrange other living accommodation(s) for the family, Mrs. Pricer began to seek re-establishment of utility service(s). Upon contacting the Rappahannock Electric Company to establish such service, she was notified of their being totally ignorant to any resident facility existing on the leased property. They further stated they would not be able to provide any electrical service without permission from the Fauquier County Building and Zoning Department. Mrs. Pricer, was advised to contact the appropriate County government agencies for their approval to re-install such electrical service box(s). Contact to the Fauquier County Building and Development Department and the Zoning Department, along with a check of their records, revealed that Mr. and Mrs. Butler had not applied for any of the required building or zoning permits and that a Certificate of Occupancy had never been issued for the leased residence (cottage). Scrutiny of the County Records revealed that only the aforementioned mobile home, (where the fire had occurred), was the sole residence lawfully permitted to be on the leased residential property. Mrs. Pricer at this time filed a formal complaint with the Fauquier County Building and Development Department. On the 5th day of January 2001, Mrs. Pricer sent proper written notice to Mr. and Mrs. Butler to take immediate action to remedy these unlawful violations. Mr. and Mrs. Butler responded to such notification by managing and

participating in innumerable acts of civil and criminal harassment and malice against the Pricer family, their pets and livestock. These acts were (and are), aided by private sector person(s), certain business(s), and agencies, who have confederated themselves with Mr. and Mrs. Butler in an effort and hope that all these issues would simply disappear or be filibustered. The Fauquier County and its' government officials, did not proceed to take any course of action under the mandated Federal and State guidelines to cause Mr. and Mrs. Butler to bring the leased home and property up to the required Uniform Statewide Building Code (USBC), Section 109.0, Application for Permit, 114.0 Inspections or 118.0 Certificate of Occupancy.

On the 28th day of December 2000, Mr. and Mrs. Butler filed a Summons for Unlawful Detainer Action in the General District Court of Fauquier County, wherein they stated the Pricer family was in default of rent in the amount of Five-Hundred dollars ($500.00). On March 2, 2001, in the General District Court of Fauquier County, with the Honorable Charles B. Foley presiding, Butler vs. Pricer, in the matter of an Unlawful Detainer Action was called to be heard. Prior to the commencement of hearing the Unlawful Detainer Action, the Honorable Charles B. Foley, *"put aside"* the Counter Claim filed on behalf of the Pricer family for *"lack of time"*. Upon hearing those matters concerning the Unlawful Detainer Action filed by Mr. and Mrs. Butler, the Honorable Charles B. Foley on the 9th day of March 2001, entered a order wherein he stated, *"that no proper 5-day quit notice was given as required by the statue and that all total rent due was paid through November of 2000"*, and *"that the dwelling was uninhabitable under 21st century standards"*. The Court then terminated the Lease and ruled that all rent should be

abated. On the 20th day of March 2001, the Pricer family filed their appeal to the Honorable Circuit Court of Fauquier County. On the 12th day of June 2001, after the Pricer family had Perfected their Appeal, the Honorable Jeffrey W. Parker in the Circuit Court of Fauquier County, held a Hearing for all such matters relating to trial. The Court at this time set the official Court Calendar for a Five (5) day trial with a jury, to commence on the 22nd day of April 2002. The Court heard arguments from S. Crisler Lindsay, Counsel for Mr. and Mrs. Butler, and Michael M. Palmer, Counsel for the Pricer family. On the 22nd day of April 2002, in the Circuit Court of Fauquier County and with the Honorable Jeffrey W. Parker presiding, trial for Samuel M. Butler, and Betty C. Butler, Complainant(s) v. Gwen R. Pricer and David Pricer, Defendant(s)\Counter-Claimant Plaintiff(s), was called to be heard. Prior to the official start of trial, the Court requested the presence of S. Crisler Lindsay, Counsel for Mr. and Mrs. Butler, and Gwen and David Pricer. This was caused by information to the Court, that Mr. Michael M. Palmer, Esq., as Counsel for the Pricers', had not presented himself to the Court to begin his representation of the Pricers' through trial matters. The Pricers' without Counsel at their side to represent them, requested and was denied a Continuance of any length of time, even though the Court held aside a five (5) day trial to hear all such matters. The Court was made aware there existed a physically disabled person who was a "Third Party" interest(s) in such matters. While the Court was preparing to start official proceedings, the Pricers' were notified as to the location of Mr. Palmer and as a result Motioned to the Court for a Continuance to allow Mr. Palmer to present himself for their representation. The Honorable Jeffrey W. Parker, again denied the Motion for Continuance and stated during his decision that the Pricers' must decide

if they would proceed with trial matters *pro se,* at which time a short recess was granted for them to make this decision.

The Pricers already overwhelmed by the event of their Counsel being absent, (Court having a jury panel and their alternates sequestered, and a witness list that included the Fauquier County Sheriff and several of his deputy officers), they were forced to proceed at trial in the Matter of the Unlawful Detainer Action *pro se.* The Honorable Jeffrey W. Parker had already issued a warning to Mr. and Mrs. Pricer wherein he stated "the Circuit Court is more formal in the requirements of trial procedure and this Court is going to hold you to those same standards as those of any other practicing attorney(s)". The Pricers were then required by the Court, without having any legal guidance, to voluntarily *"non suit"* their Counterclaim under the statue of *8. 01-380* or have the Court proceed forward with a five day jury trial on all matters concerned. The Court also allowed Counsel for Mr. and Mrs. Butler, to enter into discussions and make statement(s) of his opinions with the Court, regarding facts relating to case(s) history that was beneficial to his clients but prejudiced to the Pricer family and their case. The Pricers, who found themselves placed in a foreign arena, speaking a foreign language, and without the legal expertise to understand the material facts of law, could not intervene on their own behalf, and protect their rights of due process during this early period of trial. The trial for the Unlawful Detainer Action lasted for two days. During testimony of Mr.Butler, on cross examination by Mrs. Pricer, Mr. Butler admitted to having served on the Fauquier County Supervisory Board for almost sixteen (16) years, and to his being personally well versed in the building and zoning

codes and statues governing the State of Virginia, and those of Fauquier County. He testified that he had the opportunity to assist in the future development plans for Fauquier County. He testified that he and Mrs. Butler owned numerous real rental properties. He also testified that he was fully cognizant that Randi Lee Eckhardt was a disabled person, and a resident of the leased residence and property. During this portion of testimony he described Randi as being mentally retarded. He testified to his deliberate actions to cut-off all water service to the residency(cottage), and all utility service(s) to the barn even though he knew she was there at the time. He testified to his removal of the final power source to the leased barn facility during the snowstorm on or about the night of the 18th day of December 2000. Mr. Butler admitted during testimony that he and other family members, friends and employees, had entered onto the leased property with heavy equipment and dug several holes and trenches. That he and other persons had excavated a trench that ran through the middle of the leased property approximately the length of three-hundred- fifty feet(350), and about 3 feet deep. He further testified that by his cutting off the final power source to the barn facility, he caused the Pricer family the loss of security lights which had been installed in- and- around the barn for their protection. He testified that he had left the holes and trenches (some over 6 ft in depth) open without covering them up because it was his property and he could do what he wanted. He had testified that the Sheriff of Fauquier County had come to the leased property after Mrs. Pricer had complained of her daughter falling into the 350 ft. trench and seriously being hurt and that at the time, she was alone, and had been forced to walk her dog in the dark without the necessary security lights for her personal protection. Mr. Butler testified that the

Sheriff of Fauquier County had instructed him to completely cover the holes and trenches up. Asked if he was aware that Randi had fallen into the trench a second time after the Sheriff of Fauquier had been to the property, he testified that he had heard something about that. Mr. Butler testified that on several occasions he entered unannounced onto the leased property with other family members, friends, and other associates, and that their acts were deliberate attempts to make the Pricer family leave their leased (cottage) home and their property. He Testified that these acts were caused by the Pricer family not having paid any rent for several months, and their being squatters upon his land. When Mrs. Butler testified, she stated that she was the rental agent for several properties and was responsible for the collection of rent. She also testified that the Pricer family was behind on their rent and had been squatting on their land. She testified that she kept a recorded account of all rent payments from all of her tenants and that the Pricer had not payed any rent for several months. On the 23rd day of April 2002, during a short recess from trial proceedings, S. Crisler Lindsay, Counsel for the Butlers, entered into a discussion with Mrs. Pricer, with regards to the matter of a possible Settlement. Mr. Lindsay proffered as part of his offer, the possibility of refraining from seeking criminal charges against her for posing as a licensed practicing attorney. Hearing this statement from Mr. Lindsay, Mrs. Pricer removed herself from his presence and upon the resumption of Court, requested to be heard on the official Court Record regarding his statements. The Court did address this matter and in part became a part of the Pricer family "Statement of Facts". Mr. Lindsay through two (2) days of trial deliberately caused public embarrassment to the Pricer family, aided by certain family members of Mr. Michael M. Palmer, Counsel of the Pricer family. The

Honorable Jeffery W. Parker, on the 23rd day of April 2002, and after hearing all trial testimony, adjudicated a Final Order in the matter of the Unlawful Detainer Action. During the closing of trial on the 23rd day of April 2002, conversation between the Honorable Jeffrey W. Parker and S. Crisler Lindsay, for the memorization of the Final Order took place. The understanding by the Pricers regarding any entry of the Final Order by the Court (represented in the official transcripts), was that a draft copy would be presented to the Pricer family for their perusal. The Pricers did not receive a copy of the drafted Order as promised to the Court by S. Crisler Lindsay, Counsel and as a consequence of Counsel not producing such a drafted copy the Pricers, were caused not to be in Court on the 24th day of April 2002, to have any argument heard against the Final Order being memorialized. On the 29th day of April 2002, through their Counsel, Mr. Michael M. Palmer, the Pricer family filed a Motion to Amend the Final Order. On the 8th day of May 2002, after hearing arguments *ore tenus*, by counsel for both parties, the Honorable Jeffrey W. Parker, entered a decision in which he stated "that such Motion to Amend was frivolous and without merit". The Honorable Jeffrey W. Parker, memorialized this Order on 11th day of June 2002, over a month after the Court requested the Order to be prepared by S. Crisler Lindsay, Counsel. Also on the 8th day of May 2002, a Hearing took place in the Circuit Court of Fauquier County by the Honorable Jeffrey W. Parker, for argument from the Counsel of the Pricer family, regarding a Rule to Show Cause, issued against him as to why he should not be held in Contempt of Court for his failure to appear at trial. The Court ordered that facts were sufficient to hold Counsel in Contempt, a violation of the Virginia Code Section 18. -456. 1, the Court deferred its' adjudication for twelve (12) months,

and as part of the deferred finding, that "he withdraw as Counsel in the matter of Butler v. Pricer and that he will not serve as Counsel in the event the Pricer's re-file their counterclaim".

STATEMENT (2)
Additional Facts Presented

Acts both as a civil and criminal nature against the Pricer family since the 22nd day of November 2000 have magnified to the complete destruction of the Pricer R.V., the disappearance of a vehicle to be used as evidence in further judicial proceeding (jeep was completely vandalized and riddled with bullet holes), and on or about the 8th day of March, the leased residence (cottage) burned to the ground, destroying all the evidence being preserved by the Pricer family.

ARGUMENT FOR CERTIORARI

28 U.S.C. section 1257 (1), (2), (3), and 28 U.S.C.§ 1331. are very specific in the requirements for a Writ of Certiorari to be granted. In the case of the Pricer family, their Writ engenders all the criteria requisites for the United States to grant consideration of their Writ, The 21st Century way of life in the United States, should far exceed the interest(s) of those who would seek to undermine the intentions of our forefathers in drafting the Constitution. The Constitution in its' most purest form has been anatomized relentlessly for rights and liberties of all the citizen(s) of the United States. However; in the case of a mentally or physically handicapped person(s) we continue to fail in protecting these special individuals from the loss of these same privileges,

even after years of study and dedication from many arenas. The Pricer family Writ of Certiorari may occasion the opportunity for the United States to finally address an area that has not been clearly defined for the State(s) and their courts. Individual State judicial tribunals continue to be confused and rebellious against the direction of the United States and the Constitution. State(s) desiring to retain its own power, willingly or unwillingly, deprive certain individuals, such as the mentally and physically disabled of this Country, their right to be recognized within a judicial tribunal. Until recently act(s) of civil and criminal nature by certain governmental agency(s) and private sector(s) to perpetrate the stigmata, separation and segregation of citizen(s) has gone unbridled and this is more * *("pernicious than any private discrimination as it legitimates society's unfair consensus and such action is so* often *embodied in statutes and regulations")*. Arbitrary and irrational action by any governmental arena is what our Fourteenth Amendment sought to forbid against.

For these reasons the Pricer family request their Writ of Certiorari be <u>*Granted.*</u>

absens haeres non erit (L)....the absent one will not be the heir - out of sight, out of mind.

(This Writ of Certiorari is <u>for all the silent ones</u>).
GPR

CONCLUSION

The Writ of Certiorari should be granted to the Pricer family and any financial relief for their costs, expenses and attorney fees and any other consideration(s) that can be afforded them, along with any change in direction(s) of State government behavior towards the mentally and physically disabled..

Respectfully submitted.

Gwen R. Pricer, pro se
David Pricer
Randi L. Eckhardt, pro se
David C. M. Pricer pro se

28th day of May 2003

VIRGINIA:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

SAMUEL M. BUTLER	)	
and	)	
BETTY C. BUTLER	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. CLO1-86)
GWEN R. PRICER	)	
and	)	
DAVID PRICER	)	
	)	
Defendants.	)	

TRIAL ORDER

CAME the 22d day of April, 2002, Plaintiffs, with counsel, and Defendants. Defendants' counsel came not.

Whereupon, Defendants moved this Court for a continuance, *ore tenus*, which motion was denied and is memorialized, ~~nune pro tune~~, herein.

Whereupon, Defendants moved for a non-suit of all their claims herein, *ore tenus*, which motion was granted and is also memorialized, ~~nune pro tune~~, herein.

Whereupon, Defendants moved to proceed *pro se*, which motion was granted and is also memorialized, ~~nune pro tune~~, herein.

Whereupon, Plaintiffs' cause for unlawful detainer was heard, as well as Defendants' defense, through the

testimony presented by all parties, their witnesses, and their exhibits.

AND IT APPEARING that (i) Plaintiffs failed to procure a proper Certificate of Occupancy on the subject property prior to renting said property to Defendants, (ii) as a result of that failure, Plaintiffs could not enter into a lawful rental agreement pursuant to Fauquier County Codes and Ordinances, (iii) the Rental Agreement among the parties was therefore, void *ab initio*, (iv) Plaintiffs are entitled to possession of the subject property but not to any further rents therefor, (v) owing to the void rental agreement, Defendants are not entitled to any damages from Plaintiffs, and (vi) Plaintiffs are properly entitled to the cost of this matter, it is

ORDERED AND ADJUDGED, ~~nunc pro tunc~~, that Defendants' motion for continuance is denied; that Defendants' motion for non-suit of their claims in this cause is granted; and that Defendants' motion to proceed in their defense, *pro se*, is granted.

FURTHER ORDERED and ADJUDGED that (i) Plaintiffs failed to procure a proper Certificate of Occupancy on the subject property prior to renting said property to Defendants, (ii) as a result of that failure, Plaintiffs could not enter into a lawful rental agreement pursuant to Fauquier County Codes and Ordinances, (iii) the Rental Agreement among the parties was, therefore, void *ab initio*, (iv) Plaintiffs are entitled to possession of the subject property 30 days from the entry of this Order but not to any further rents therefor, (v) owing to the void rental agreement, Defendants are not entitled to any damages from Plaintiffs, and (vi) Plaintiffs are properly further entitled to the cost of this matter.

FURTHER ORDERED and ADJUDGED that the

bond held by this court in the amount of $5,750.00, less the cost of $423.00 awarded to Plaintiffs, is returned to Defendants after the expiration of the appeal period if no appeal is taken.

Enter this 24 day of April, 2002.

(S) Jeffrey W. Parker
Judge
Jeffrey W. Parker

I ASK FOR THIS:
(S) S. Crisler Lindsay
S. Crisler Lindsay
763 Madison Road, Suite 206
Culpeper, Virginia 22701
(540) 825-9500

SEEN:

(S) Noticed
Defendant David Pricer

(S) Noticed
Defendant Gwen R. Pricer

(Stamp)
A COPY TESTE: GAIL H. BARB, CLERK
BY (S) Nancy Heidt DEPUTY CLERK
Nancy Heidt
FAUQUIER CO. CIRCUIT COURT, VIRGINIA

Virginia:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 28th *day of* February, 2003.

Gwen R. Pricer, et al., Appellants,

against Record No. 021746
Circuit Court No. CL01-86

Samuel M. Butler, et al., Appellees.

Upon a Petition for Rehearing

On Consideration of the petition of the appellants to set aside the judgement rendered herein on the 23rd day of December, 2002 and grant a rehearing thereof, the prayer of such petition is denied.

A Copy,
Teste:

(S) David B. Beach

(b).

Virginia:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday ***the*** 23rd ***day of*** December, 2002.

Gwen R. Pricer, et al., Appellants,

against Record No. 021746
Circuit Court No. CL01-86

Samuel M. Butler, et al., Appellees.

From the Circuit Court of Fauquier County

On November 14, 2002 came the appellants, in proper person, and filed a motion to amend the record in this case. On November 21, 2002, came again the appellants, in proper person, and filed a motion for injunction and restraining order. On November 21, 2002, also came the appellees, by counsel, and filed a motion to quash in response to appellants' motion to amend the record. Upon consideration whereof, the court denies the appellants' motions.

Further, upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of opinion there is no reversible error in the judgement complained of. Accordingly, the court refuses the petition for appeal.

A Copy,
Teste:

David B. Beach, Clerk
By: (S) Shaun L. Kelly
Deputy Clerk

(c).

Virginia:

In the Court of Appeals of Virginia on Wednesday *the* 19th *day of* June, 2002.

Gwen R. Pricer, et al., Appellants,

against Record No. 021746
Circuit Court No. CL01-86

Samuel M. Butler, et al., Appellees.

From the Circuit Court of Fauquier County

It appears that this Court does not have jurisdiction over this case. Accordingly, the case hereby is transferred to the Supreme Court of Virginia pursuant to Code § 8.01-677.1.

A Copy,
Teste:
Cynthia L. McCoy, Clerk
By: (S)Illegible
Deputy Clerk

(d).

RESIDENTIAL LEASE

This lease is made on the 15th day of Sept. 2000, (804)-776-7885
The Landlord hereby agrees to lease to Tenant, and Tenant hereby agrees to hire and take from Landlord, Leased Premises described below pursuant to terms and conditions specified herein:

LANDLORD: Samuel and Betty Butler
Address: P.O. Box 283
Deltaville, VA 23043
Nightingale Lane, Midland VA 22728

TENANT: Gwen and David Pricer
Mailing Address
Address: P.O. Box 306
Upperville, VA 20185
Business: Line One
Lorton, VA
Dep.: $300.00 8/10
Dep.: $300.00

1. Leased Premises. The Leased Premises are described as: (Cottage) at 10232 Copper Fox Lane Midland, Va. + 26 acre pasture/barn, stalls

2. Term. Term of Lease shall be for 2 years commencing and ending on Midnight Sept. 15, 2002. If tenant remains in possession of leased premises with consent of Landlord after lease expiration date, Lease will convert to a month-to-month Lease and each party will have right to terminate Lease by giving one month's prior written notice to other party.

3. Rent. Monthly rent for Leased Premises is $1,000.00 per month. Payment must be paid by the 5th day of each month at Landlord's address. The first month's rent is due when Tenant signs lease. Until, Feb. 1, 2001-rent will become $1,250.00 per. mo..

4. Security Deposit. Upon Tenant's execution of Lease, Tenant shall make a security deposit of $600.00 to Landlord to ensure that Tenant complies with all terms and conditions of Lease. If Tenant fully complies, Landlord will return security within four weeks after date Tenant delivers possession of Leased Premises to Landlord. If Tenant does not comply with terms of Lease, Landlord may use security to pay amounts owed by Tenant, including damages.

5. Default/Abatement. If Tenant defaults in payment of rent or any other term or condition, Landlord may give Tenant written notice to cure default. If Tenant fails to cure default within 10 days of receiving notice, Landlord may terminate Lease, enter Premises, and remove Tenant occupants and their possessions.

If Tenant abandons or vacates Leased Premises during Term of Lease, Landlord may re-enter Premises, without liability for prosecution of owing damages to Tenant, and relet leased Premises. If Landlord elects not to relet Premises, Tenant shall be liable for remainder of rent due under Lease until its expiration. If Landlord relets Leased Premises but is unable to relet the Premises for as much rent as would have been paid by Tenant during period between Tenant's abandonment and end of Term, Tenant shall be liable to Landlord for difference. Landlord may dispose of property left by Tenant after abandonment without liability and apply

proceeds to reduce such difference.

6. Occupants. The Lease Premises shall be occupied by the following persons only: The Tenant and his immediate family. 3 persons, 2 dogs

No other persons shall occupy Leased Premises without advance written consent of Landlord. Authorized occupants may only use Premises for residential purposes and not for commercial or business purposes.

7. Repairs. Tenant must take good care of Leased Premises and all equipment and fixtures contained herein. Tenant is liable for damages caused by his acts or neglect and any acts or neglect of his family or guests. Tenant must make all repairs and replacements resulting from his act or neglect. If tenant fails to make needed repairs or replacements, Landlord may and add expenses to rent. Landlord is liable for any major maintenance work not resulting from Tenant's acts or neglect.

8. Partial or Total Destruction of Leased Premises. If Leased Premises are partially damaged or completely destroyed by fire or other occurrence that is not caused by Tenant's negligence or willful act (or Tenant's family or guests), Landlord: (1) repair or rebuild Leased Premises during period of untenantability and abate rent proportionally for this period; or (2) not repair or rebuild Leased Premises, terminate Lease and prorate rent up to time of damage.

9. Alterations. Tenant must obtain Landlord's prior written consent to paint or wallpaper Leased Premises or install paneling, flooring, partitions, railings or make any other

alterations. Tenant must not alter plumbing, ventilation, air-conditioning, heating or electrical systems. All alterations, installations, and improvements become property of Landlord when completed and paid for, and shall be surrendered as part of Leased Premises at end of term. Landlord is not required to pay for work perfomed under this section unless he has agreed to pay as indicated in his prior written consent.

10. Maintenance of Leased Premises. Tenant shall, at Tenant's expense, maintain premises in a clean and sanitary condition. At the end of term, Tenant will leave Leased Premises clean and in good condition, with exception of ordinary wear and tear. Tenant shall remove all belongings and surrender keys to Landlord upon expiration of Lease.

11. Assignment/Subletting Restrictions. Tenant may not assign agreement or sublet Leased Premises without prior written consent of Landlord. Assignment, sublease or other purported license to use Lease Premises by Tenant without Landlord's consent shall be void and terminate Lease.

12. Utilities/Services. Tenant is responsible for payment of all utilities and services.

13. Landlord's Right to Enter. Landlord may, at reasonable times, enter Leased Premises to inspect, make repairs or alterations or to show to potential buyers, lenders, or tenants.

14. Pets. Tenant may not keep pets in Leased Premises.

15. Laws and Regulations. Tenant must, at Tenant's expense, comply with laws, regulations, ordinances and requirements

of municipal, state and federal authorities effective during term of lease, pertaining to use of premises. Tenant must not do anything that increases Landlord's insurance premium.

16. Legal Fees. The successful party in legal action or proceeding between Landlord and Tenant relating to non-payment of rent or recovery of possession of leased Premises, may to extent legally available, recover reasonable legal fees and costs from unsuccessful party.

17. Inspection Prior to Occupancy. Tenant has inspected Leased Premises and agrees that Premises, and all improvements, are in good, habitable condition at the time lease is being signed.

18. Subordination. This Lease and Tenant's leasehold interest, is and shall be subordinate, subject and inferior to any and all liens and encumbrances now and thereafter placed on Leased Premises, by Landlord, any and all extensions of liens and encumbrances and all advances paid under liens and encumbrances.

19. Binding Obligations. This Lease agreement is binding on Landlord and Tenant and those who lawfully succeed their rights or take their place. Tenant and Landlord have read lease and all promises made by parties are contained in this lease.

This lease is effective when Landlord delivers a copy signed by all parties to the Tenant. Parties have above signed this agreement in duplicate the day and year written above.

B.C. + S. M. Butler
Landlord

(S) S. M. Butler
(S) B. C. Butler

(S) David Pricer
Tenant
(S) Gwen R. Pricer

Twentieth Judicial District
of Virginia

Charles B. Foley, Judge
General District Judge

Sandra K. Ramey, Clerk
Telephone (540) 347-8627
Fax (540) 347-5756

Commonwealth of Virginia
General District Court of Fauquier County
6 Court Street
Warrenton, Virginia 20186-3299

March 9, 2001

S. Crisler Lindsay, Esquire
311 Park Avenue
Culpeper, Virginia 22701

Michael M. Palmer, Esquire
87 Lee Highway, Suite 23
Warrenton, Virginia 20186

Re: Butler vs. Pricer - V00-2259

Dear Gentlemen,

The above captioned matter was heard in this Court on March 2, 2001. The Court, at that time, took the matter under advisement to review the exhibits filed, the trial testimony, the argument of counsel and the applicable law. To say this is a complex matter would be a gross understatement.

This trial was begun by the filing of an Unlawful Detainer action on December 28, 2000 alleging the

(e).

Defendants were in default for unpaid rent in the amount of $500.00. To determine whether the rent claim is valid, the Court must first examine the lease agreement dated September 15, 2000. The Court finds that the lease agreement was signed by the Plaintiffs and delivered to the Defendants. There is disagreement as to whether or not the lease was ever received back by the Plaintiffs, but in reality, because of the parties' actions the disagreement is of no consequence. The first critical question or issue is whether or not the lease agreement falls under **Chapter 13** of the **Code of Virginia** commonly referred to as the statuary *Common Law Landlord and Tenant Act* or whether it falls under **Chapter 13.2**, the *Virginia Residential Landlord and Tenant Act*. If, in fact, the Plaintiffs own in their name more than 10 single-family residences, then the *Virginia Residential Landlord Tenant Act* would apply.

Mrs. Butler, upon being cross-examined by counsel for the Defendants stated she managed 22 properties. However, there was no discussion further regarding the type or location of those units. Without knowing whether 10 of these would qualify as single family residences the Court cannot determine that the more comprehensive act applies. Therefore, the Court must follow **Chapter 13**. The Court surmises that this lease agreement most likely should be resolved under the requirements of the *Virginia Residential Landlord Tenant Act*, under which neither the Plaintiffs or the Defendants have followed the applicable statuatory rules regarding notice of default or payment of rent into court. Therefore, the Court, unfortunately, cannot address the valid issues of a landlord's warranty of habitability and retaliatory conduct.

The Court now must address the initial basis for the court action. First the Court would find that no proper 5-day pay or quit notice as required by statute was given the Defendants by the Plaintiffs. The testimony at trial established that the total rent due was paid in full through November of 2000, even though the parties varied the time and amount of payment as established in the written lease. It was agreed that the Defendants never paid one-half of the agreed security deposit. This, in and of itself, can be considered a breach of the lease. However, this was not a basis for the institution of legal proceedings, but was developed at trial through the sworn testimony.

It was established that a fire at an adjoining property terminated the electrical service to the dwelling house and that shortly thereafter water service to the Defendants was likewise eliminated. The Court believes that the inability of the Plaintiffs to reasonably restore electricity and water to the Defendants could create a constructive eviction situation where rent could be abated. This would be true provided the Court was also convinced the Defendants didn't in anyway hinder the Plaintiffs in their efforts to repair the problem.

It was argued that the Court should apply Paragraph 8 of the lease in favor of the Plaintiffs and rule that, in effect, the leased premises used as a dwelling was sufficiently damaged so that there would be no duty to repair by the Plaintiffs. This provision normally relates to damage directly to the principle dwelling. In this case the damage was such that the dwelling, in the Court's opinion was uninhabitable under 21st century standards. The Plaintiffs given sufficient time could remedy these problems. However, governmental requirements could override the reasonable time to repair

standard in this type of case.

The Court, in conclusion, believes there has been a default by both the Plaintiffs and the Defendants. The Defendant's breach involves the failure to comply with the security deposit requirement, and the Plaintiff's breach relate to their unwillingness to promptly restore the utilities to the dwelling house. Therefore, the Court finds that the lease agreement should be terminated, that all rent should be abated, that no counsel fees should be allowed and the Defendants are directed to vacate the premises on or before April 15, 2001. Counsel should advise their respective clients of their statuary right of appeal and the Clerk of this Court is directed to remove this case from the docket.

Respectfully yours,
(S) Charles B. Foley
Charles B. Foley, Judge